

# YOUR RIGHTS UNDER THE MISSOURI WORKERS' COMPENSATION LAW

## **What is the Workers' Compensation Law?**

The workers' compensation law, found in Chapter 287 of the Revised Statutes of Missouri, controls the rights and obligations of employees and employers when employees sustain an accident or occupational disease in the course and scope of their employment.

## **Who is Covered by Workers' Compensation?**

Any employer with five or more employees, and all employers in the construction industry, are required to provide protection for their employees under the Missouri Workers' Compensation Law. Most employers do this by purchasing workers' compensation insurance. Some employers gain approval to self-insure their workers' compensation liability. If your employer has five or more employees, or if your employer is in the construction industry and has even one employee, it is required to either obtain insurance coverage or become authorized as a self-insured. If you do not know whether your employer has workers' compensation coverage, you may obtain this information from the Missouri Division of Insurance or the Missouri Division of Workers' Compensation. You may wish to consult an attorney.

## **I Was Injured at Work. What Should I Do?**

Promptly report your injury to your supervisor. Missouri law section 287.420 requires that you give written notice of the time, place and manner of the injury within 30 days. The name and address of the injured person must also be included. There are some exceptions to this rule. You may wish to consult an attorney. Further, if your problem is due to a repetitive or overuse injury (such as carpal tunnel) or some other illness due to work, notify your employer in writing within 30 days of when you become aware of the problem.

## **How Do I Get Medical Treatment For My Injury?**

Tell your employer that you need medical care for your work injury. Your employer has the right to select the treating doctors. If you are not satisfied with the doctor your employer selects, you may choose your own doctor

at any time during your claim at your own expense. Your regular health insurance usually *will not pay* for work-related treatment. Further, if you use Medicare, Medicaid or veterans' benefits to treat a work-related injury, they may take some or all of your settlement money to recover what they spent.

It is possible for an employer to forfeit its right to select medical providers in certain circumstances. One example is if your employer refuses to send you to the doctor. You may want to consult with an attorney.

## **Will I Be Paid When I Am Off Work?**

If the authorized treating doctor certifies that you are unable to work, or places you on temporary restrictions that make it impossible to work in the open labor market, you will receive, tax free, two-thirds of your average weekly gross wage for the time you are unable to work. This is called "temporary total disability," or TTD. If an *unauthorized* doctor certifies you are unable to work, you may or may not receive TTD.

If you are unable to work, you will not be paid for the first three regularly scheduled workdays after your injury, the so-called "waiting period." If you remain off work for two weeks, the three-day waiting period will then be paid.

This rule has many complicated exceptions. One example is if a doctor places you on light duty. Your employer may or may not have work available within your light duty restrictions. If they do not have light duty work available, you may be entitled to temporary total disability benefits.

If you can work while being treated for your injury, but make less money due to fewer hours or lower pay, you will receive "temporary *partial* disability," a lesser amount than TTD.

If the employer fires you for misconduct committed *after* the injury, you may not be entitled to any TTD. You may also lose some of your temporary total disability benefits as a penalty if you fail a drug screen or violate a safety policy.

You cannot collect TTD for any time you collect unemployment benefits.

If you have any questions about whether you are entitled to TTD or TPD benefits, or subject to a penalty, consult an attorney.

## **How Much Will My Weekly Lost Time Check Be?**

The basic rule is this: you are paid, tax-free, two-thirds of your average weekly gross wage (up to a maximum set by law) based on the 13 weeks of earnings leading up to the work injury. However, this rule does not always apply.

There are special rules for part-time workers, minors, individuals working two jobs, salaried workers, new hires, apprentices, underage workers and employees with absences *before* the injury.

If you believe your average weekly wage was incorrectly calculated, you may want to consult with an attorney.

## **Will I Be Paid Mileage For My Trips to the Doctor?**

You are entitled to “all necessary and reasonable expenses” for medical care if you treat “outside the local or metropolitan area from [your] principal place of employment.” The law does not define “metropolitan area.” Many judges use a 25-30 mile roundtrip as a guide. “Expenses” include mileage to and from doctor appointments at a rate determined by statute.

If you live out of state and worked for a Missouri employer, different rules apply.

## **Will I Get a Settlement?**

If you are able to return to work after your injury, you may be entitled to a settlement as payment for your “permanent partial disability.” The amount that you will receive for your permanent injury depends on the extent of your disability. Your disability may be evaluated by doctors or other experts. The amount of the settlement will vary depending upon several factors, including the disability ratings from the doctors, your average weekly wage, and the date of your accident. Doctors often disagree regarding the percentage of permanent partial disability in any given case. The amount of your permanent partial disability, if any, probably cannot be determined until you have completed your medical treatment.

## **How Much Will My Settlement Be?**

There are *no standard settlement amounts* for injuries. No list or chart can tell you what your case is worth. Each case is different.

This is a partial list of factors that go into computing workers’ compensation settlements:

- part of body (some are more valuable than others)
- pre-injury earnings
- date of injury
- pre-existing injuries
- drug or alcohol penalties
- employee’s age

- safety penalties
- diagnosis and how well you recovered
- amount of treatment and lost time
- whether you were able to return to your former job duties
- permanent problems and limitations
- future medical care or medicine
- whether you had surgery, broken bones, torn tissues, etc.
- doctors' opinions, both the company doctor and your own
- partial or total disability
- Second Injury Fund, Medicare, Medicaid, unemployment, child support, medical liens, or other outside interests

A judge does not represent either party and cannot advise an employee to accept or reject a settlement offer. The law requires that the insurance company have an attorney. The employee is not required to have an attorney but may wish to retain one. Evaluating settlements requires knowledge and experience. An injured employee probably cannot determine a case's value without a lawyer's advice. The employer/insurer's attorney is the employee's opponent and cannot give the employee legal advice. Only an attorney representing your interests can help you determine the case's value.

## **Will My Settlement Be Limited to the Company Doctor's Rating?**

The company doctor does not control the amount of your settlement. Any doctor's rating (yours or the employer's selected doctor) is merely one opinion to be considered along with the rest of the evidence in the case.

## **Are Occupational Diseases Covered?**

The law intends that work-related occupational diseases, such as lung illnesses, skin problems, carpal tunnel and other overuse injuries, and all other work-related illnesses be covered if your working conditions were the primary cause. You should report such an illness or injury to your employer within 30 days of receiving a diagnosis and ask for testing and treatment.

In addition, workers' compensation may not be your exclusive remedy. You may be entitled to pursue other legal actions. You may want to consult with an attorney for consideration of other options.

## **Will I Be Paid for Scars or Disfigurement?**

Yes, if visible on your head, neck, arms or hands. The amount is based upon the severity of the scarring.

## **What If I Can't Return to Work?**

If you are permanently and totally disabled from *all* types of employment due to your work injury, or due to your work injury in combination with pre-existing injuries or illnesses, you may qualify for a weekly, tax-free check for life. These are “permanent, total disability” benefits, and will be the same amount as your TTD (lost time) checks.

If you are totally disabled under workers' compensation, you may also be totally disabled under Social Security. Promptly apply for those benefits. An injured worker who is eligible for SSD benefits should consult with an attorney to avoid an offset with workers' compensation benefits.

## **What is the Second Injury Fund?**

If you had a physical or mental disability before you got hurt at work, the Second Injury Fund may owe you additional benefits, either as a lump sum or as a weekly check for life.

The Second Injury Fund also pays for medical treatment if an employer did not have the required workers' compensation insurance. It may also pay money if an injured employee lost out on wages at a second job due to injury at his first job.

Second Injury Fund obligations are complicated, and an injured employee must file a claim within time limits. You may want to consult with an attorney.

## **What is Vocational Rehabilitation?**

Vocational rehabilitation services help injured workers return to work through education or retraining. Employers and insurers may offer such services but are not required to do so. If they do, they must pay weekly checks during the rehabilitation process.

Injured employees unable to return to work may also qualify for assistance from the Missouri Division of Vocational Rehabilitation, which is not related to the Division of Workers' Compensation. You may contact the Missouri Division of Vocational Rehabilitation at 3024 Dupont Circle, Jefferson City, MO 65109, (573) 751-3251.

## **When Is the Deadline to File a Claim?**

Telling your employer that you were hurt on the job, or even filling out an incident report, is not the same as filing a claim.

A written claim for an on-the-job injury must be filed with the Division of Workers' Compensation within two years of the latest of these: a) date of accident; b) date of last payment of money benefits; c) date of last payment for medical treatment for the work injury. This is known as the statute of limitations and is separate from the 30-day "notice" requirement discussed earlier. Filing a claim may not be necessary to receive benefits, (i.e., the employer and insurer may volunteer to pay some or all of your benefits), but once the statute of limitations passes, you will not be allowed to file a claim to enforce your rights. The Missouri Division of Workers' Compensation provides a form to file such claims.

An exception may extend the two-year deadline. If the employer did not file the required "report of injury" form with the Division of Workers' Compensation on time, the injured employee's deadline changes to three years.

Second Injury Fund claims must be filed within two years of the accident date or within one year after filing a claim against the employer, whichever is later.

There are other exceptions to these rules, especially regarding occupational illnesses and repetitive injuries. Even if you believe the time limits for filing a claim have passed, you should consult an attorney.

## **What Happens If My Employer Has No WC Insurance?**

If the employer has five or more employees or is in the construction industry, it is subject to civil and criminal penalties, and you may report them to the Fraud and Non-compliance Unit at (800) 592-0063. The employee may elect to seek benefits under workers' compensation or pursue an action in civil courts.

The Second Injury Fund may pay for necessary medical care if the employee elects to pursue workers' compensation benefits.

## **Which State's Laws Apply?**

Missouri law will apply if: a) you were injured in Missouri, or b) you were hired in Missouri, or c) your work was principally done in Missouri.

More than one state's law can apply to the same case at the same time. For example, it is possible to have Missouri and Illinois cases at the same time for the same injury. Your rights and responsibilities vary from state to state.

## **Do I Need a Lawyer?**

You are not required to have a lawyer. But the employer and insurer must have one, and the workers' compensation judges and staff do not represent your interests, cannot give you legal advice, and are not allowed to tell you if a settlement offer is fair. In addition, the employer's/insurer's attorney is your opponent and cannot give you legal advice. A lawyer who represents your interests can answer your questions and, if necessary, take your case to mediation or trial.

A workers' compensation case is a legal matter that may affect the rest of your life. Although originally designed to be a simple, no-fault system, the law has been changed many times and has become complicated. Besides the complexity of the workers' compensation law itself, other areas of law are now involved, such as Medicare, Medicaid, unemployment, medical malpractice, products liability, OSHA, ERISA, ADA, COBRA, HIPAA, discrimination, divorce, veterans' benefits, health insurance, privacy, collective bargaining agreements, short-term and long-term disability, Social Security and wrongful firing. Decisions you make on your workers' compensation case may affect those rights as well.

## **What Will a Lawyer Cost?**

Most lawyers provide free initial consultation, ask for no retainer fee, and are paid a contingency fee, usually 25 percent of what they recover for you. The judge must approve all fees. If the case is lost, there is no fee. Most lawyers will advance the costs of litigation, including a medical evaluation, then recoup the expenses at the end of the case.